

CENTER FOR HEALTH INFORMATION & ANALYSIS

ADDENDUM TO DATA USE AGREEMENT

FOR GOVERNMENT AGENCIES RECEIVING MASSHEALTH DATA

This Addendum supplements the Data Use Agreement (“DUA”) between the Center for Health Information and Analysis (“CHIA”) and _____ (“Data Recipient”), and is effective as of the date of execution below. To the extent that this Addendum is inconsistent with any terms in the DUA, this Addendum modifies and overrides the DUA.

The Data Recipient has submitted an application to CHIA, a copy of which is attached as Exhibit A to the DUA (the “Application”), requesting certain information to be used for the specific purpose(s) identified in Sections I and II of the Application. The Data Recipient acknowledges that the information that it has requested from CHIA contains information provided to CHIA by the Executive Office of Health and Human Services (“EHS”), the state agency responsible for administering the Commonwealth’s Medicaid Program and its Children’s Health Insurance Program (collectively, “MassHealth”) in accord with Titles XIX and XXI of the Social Security Act, M.G.L. c. 118E and other applicable federal and state laws, regulations and waivers. This Addendum addresses the conditions under which CHIA shall disclose, and the Data Recipient shall use, disclose, safeguard and protect, information obtained by CHIA from EHS that pertains to MassHealth applicants or members, that constitutes “Personal Data,” as defined in M.G.L. c. 66A, or “Protected Health Information,” as defined in 45 C.F.R. §160.103, or that is otherwise treated as confidential under any other federal or state law applicable to EHS protecting individually identifiable information (collectively, the “MassHealth Data”). This Addendum also sets forth the Data Recipient’s requirements with respect to safeguarding any MassHealth-specific Provider Numbers that it receives from CHIA under the DUA, which Provider Numbers shall be considered “MassHealth Data” for the purpose of this Addendum.

1. Ownership of the Data: The Data Recipient acknowledges that the Data Recipient has no right, title or interest in the MassHealth Data other than the right to use the MassHealth Data in accordance with the DUA, as supplemented by this Addendum.

2. Minimum Data Necessary: The Data Recipient affirms that the requested MassHealth Data is the minimum necessary to achieve the specific purpose(s) stated in the Application.

3. Use and Disclosure of the Data: The Data Recipient agrees as follows:

- (a) The Data Recipient shall use MassHealth Data only for the specific purpose(s) identified in the Application, and shall not use the MassHealth Data for any other purpose, including any other analytical or operational purpose, even if the MassHealth Data has been de-identified in accordance with 45 C.F.R. §§ 164.514(a), (b)(2), and (c), unless such use and purpose is permitted in writing by CHIA and EHS.

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- (b) The Data Recipient shall not disclose MassHealth Data to any individual or entity for any purpose except in accordance with the requirements of the DUA and Section 5 of this Addendum, unless such disclosure is permitted in writing by CHIA and EHS or is otherwise required by law.
- (c) The Data Recipient shall not use MassHealth Data, alone or in combination with other information, to identify or contact the individuals to which the MassHealth Data applies.

4. Data Privacy and Security.

- (a) The Data Recipient agrees that, in connection with its collection, storage, maintenance, use and dissemination of the MassHealth Data, it shall comply with (i) all federal and state laws and regulations applicable to the privacy or security of the MassHealth Data, including, without limitation, M.G.L. c. 66A and M.G.L. c. 93H, and (ii) all applicable data privacy and security policies established by Executive Order 504 and the Commonwealth's Information Technology Division.
- (b) The Data Recipient agrees that it shall implement reasonable and appropriate physical, technical and administrative safeguards intended to prevent the MassHealth Data from being used, accessed or disclosed other than as specified in the DUA, as supplemented by this Addendum, intended to protect the confidentiality and security of the MassHealth Data and to prevent any security breach involving MassHealth Data. At a minimum, such safeguards must satisfy the requirements of M.G.L. c. 66A, Executive Order 504, any requirements established by the Information Technology Division for the protection of personal information maintained by state agencies and any other applicable law or regulation referenced in Section 4(a) above. Such safeguards shall include, but not be limited to: software and computer operating systems with sufficient security features, including encryption and required passwords, to restrict unauthorized access, locked cabinets, and appropriate personnel training.
- (c) The Data Recipient agrees that it shall safeguard any password, user ID or other mechanism or code permitting access to any database containing MassHealth Data and any code or other means of record identification designed to enable coded or otherwise de-identified MassHealth Data to be re-identified from unauthorized use, access or disclosure to the same extent that it is required to safeguard MassHealth Data under the DUA, as supplemented by this Addendum.

5. Access to Data by Employees, Contractors and Agents.

- (a) The Data Recipient agrees that it may grant access to MassHealth Data only to such employees who need such access to carry out their job function, which function shall further the specific purpose(s) stated in the Application, and who have executed a Confidentiality Agreement in accord with Section 3 of the DUA. The Data Recipient shall ensure that all such employees with access to MassHealth Data comply with the privacy and security terms and conditions set forth in the DUA, as supplemented by this Addendum.
- (b) The Data Recipient agrees that it may grant access to MassHealth Data only to those contractors and agents who need such access to carry out the function for which they have been engaged,

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which function shall further the specific purpose(s) stated in the Application. Prior to providing any contractor or agent with access to MassHealth Data, the Data Recipient shall ensure that any such contractor or agent has agreed in writing to comply with the same (or more stringent) privacy and security obligations, restrictions, terms and conditions that apply to the Data Recipient under the DUA, as supplemented by this Addendum, with respect to the MassHealth Data. No contract with or delegation to a contractor or agent shall relieve or discharge the Data Recipient from any duty, obligation, responsibility or liability arising under the DUA, as supplemented by this Addendum, in connection with the actions or omissions of a contractor or agent.

- (c) The Data Recipient shall grant access to MassHealth Data to authorized employees, contractors and agents through unique user accounts that are password protected or through other industry standard security mechanisms which prevent unauthorized persons from accessing MassHealth Data. The Data Recipient shall require such employees, contractors and agents to maintain the confidentiality and security of all passwords and other access mechanisms. The Data Recipient shall ensure that any such authorized employees, contractors and agents complete appropriate training in privacy and security protections and procedures applicable to personal data (as defined in M.G.L. c. 66A) including MassHealth Data.
- (d) The Data Recipient shall limit access to MassHealth Data by employees, contractors and agents to the minimum amount of data necessary to achieve the specific purpose(s) identified in the Application.

6. Disclosure of Findings: The Data Recipient Agrees that it shall not publish any MassHealth Data, or any data derived or extracted from such data, in any paper, report, website, statistical tabulation, or similar documentation unless such paper, report, website, statistical tabulation, or similar documentation conforms to the standards for de-identification set forth under 45 C.F.R. §§ 164.514(a), (b)(2), and (c) and further, that any such publications shall be limited to the specific purpose(s) described and approved in the Application. The Data Recipient shall not publish or disclose in any public paper, report, website, statistical tabulation or similar document any data on ten (10) or fewer individuals or data derived from ten (10) or fewer claims.

7. Breach Notification and Corrective Action: The Data Recipient agrees to immediately report any breach of personally identifiable information to CHIA, as provided in the Data Recipient's DUA with CHIA. The Data Recipient agrees that in the event CHIA determines or has a reasonable belief that the Data Recipient or any of its contractors or agents has made or may have made a use, reuse or disclosure of the aforesaid MassHealth Data that is not authorized by this agreement or another written authorization, CHIA, at its sole discretion, may require the Data Recipient to: (a) promptly investigate and report to CHIA the Data Recipient's determinations regarding any alleged or actual unauthorized use, reuse or disclosure; (b) promptly resolve any problems identified by the investigation; (c) if requested by CHIA, submit a formal response to an allegation of unauthorized use, reuse or disclosure; (d) if requested by CHIA, submit a corrective action plan with steps designed to prevent any future unauthorized uses, reuses or disclosures; and (e) if requested by CHIA, return MassHealth Data files to CHIA or destroy the MassHealth Data files it received from CHIA under this agreement.

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8. Termination of DUA: CHIA may terminate the DUA immediately upon written notice to the Data Recipient if CHIA determines, in its sole discretion, that the Data Recipient has materially breached any of its obligations with respect to the privacy or security of MassHealth Data under the DUA, as supplemented by this Addendum.

9. Return or Destruction of the Data: The Data Recipient agrees to return or destroy the MassHealth Data and any derivative data, at CHIA's direction, within 30 days: 1) of the completion of the research described in the Application; 2) of the termination, for any reason, of the Data Recipient's DUA with CHIA; 3) of CHIA's request made pursuant to Section 7(e) of this Addendum; or 4) the termination of the DUA by CHIA pursuant to Section 8 of this Addendum. If destruction is requested, the Data Recipient shall destroy such data in accord with standards set forth in NIST Special Publication 800-88, Guidelines for Media Sanitization, all applicable state retention laws, all applicable state and federal security laws and regulations and all applicable state data security policies including policies issued by the Information Technology Division. Within five (5) days of the completion of any requested destruction, the Data Recipient shall provide CHIA with a written certification that destruction has been completed in accord with the required standards and that the Data Recipient and its contractors and agents no longer retain such data or copies of such data.

10. Survival: Notwithstanding any other provision concerning the term of the DUA, the Data Recipient's obligations with respect to the privacy and security of MassHealth Data shall continue to apply until such time as all such data is returned to CHIA or destroyed in accord with Section 9 of this Addendum.

11. Inspections: The Data Recipient agrees to grant access to the MassHealth Data in its possession to: (a) the authorized representatives of CHIA, for the purpose of inspecting to confirm the Data Recipient's compliance with the terms of the DUA, as supplemented by this Addendum; (b) upon notice to CHIA, the authorized representatives of EHS, for the purpose of inspecting to confirm CHIA's compliance with the terms of any agreement between CHIA and EHS which pertains to the MassHealth Data; and (c) upon notice to CHIA and EHS, other state and federal authorities to the extent permitted or required by law for the purpose of accomplishing such purpose(s) for which such authorities are permitted or required by law to access the MassHealth Data.

12. Amendments: This Addendum may be amended in a writing signed by CHIA and the Data Recipient. The Data Recipient agrees to take such action as is necessary to amend this Addendum in order for CHIA or EHS to comply with the requirements of any applicable state or federal law or regulation pertaining to the privacy or security of MassHealth Data. Upon CHIA's written request, the Data Recipient agrees to enter promptly into negotiations for any amendment as CHIA, in its sole discretion, deems necessary for CHIA's or EHS' compliance with any such laws or regulations. The Data Recipient agrees that, notwithstanding any other provision in the DUA or this Addendum, CHIA may terminate the DUA immediately upon written notice, in the event the Data Recipient fails to enter into negotiations for, and to execute, any such amendment within a reasonable time following receipt of CHIA's written request.

By signing this Addendum, the Data Recipient agrees to abide by all provisions set out herein. The undersigned individual signing this Addendum on behalf of the Data Recipient hereby attests that he or she is authorized to legally bind the Data Recipient to the terms this Addendum and agrees to all the terms specified herein.

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For _____:
Data Recipient (Government Agency)

_____	_____
Authorized Signature	Date

Print Name: _____

Title: _____

Agency: _____

Address: _____

Telephone: _____ E-Mail: _____